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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 6

COMPAGNIE GENERALE TRANSATLANTIQUE,
PETITIONER,

vs.

PHILIP ELTING, COLLECTOR OF CUSTOMS,
PORT OF NEW YORK.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 15, 1935.

CERTIORARI GRANTED APRIL 29, 1935.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L. 50/136

COMPAGNIE GÉNERALE TRANSATLANTIQUE, Plaintiff,

against

PHILIP ELTING, Collector of Customs at the Port of New York, Defendant

STATEMENT UNDER RULE 13, PAR. 4

The action was commenced on June 30, 1931.
Summon and complaint, filed July 8, 1931.
Answer filed February 1, 1932.
Trial was had February 2, 1934, before Hon. Francis G. Caffey and a jury of one.
Judgment entered February 24, 1934.
Appeal taken April 10, 1934.
Bill of Exceptions filed May 3, 1934.
Time to file bill of exceptions and record on appeal duly extended.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

SUMMONS

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable, John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 30th day of June, A. D. 1931.

Charles Weiser, Clerk.

John M. Lyons, Plaintiff's Attorney, Office and Post Office Address, 27 William Street, Borough of Manhattan, City of New York. (Seal.)

[fol. 3] In United States District Court, Southern District of New York

Compagnie Generale Transatlantique, Plaintiff,

against

Philip Elting, Collector of Customs at the Port of New York, Defendant.

Complaint

Plaintiff, a corporation duly organized and existing under and pursuant to the laws of the Republic of France, and having a place of business and transacting business at No. 19 State Street, New York, N. Y., which is within the limits of the District Court of the United States for the Southern District of New York, for its complaint against Philip Elting, Collector of Customs at the Port of New York, alleges and shows as follows:

For a First Cause of Action

1. That during all the times hereinafter mentioned, plaintiff was and still is a corporation duly organized under the laws of the Republic of France and engaged as a common carrier in the transportation of passengers and cargo for hire between European ports and seaports of the United States.

2. That during all the times hereinafter mentioned, the defendant was and still is the Collector of Customs at the Port of New York.

[fol. 4] 3. That the plaintiff was at all times hereinafter mentioned and still is the owner of the S. S. "Ile de France."

4. That heretofore and on or about February 6, 1930, plaintiff brought to the United States at the port of New York on the S. S. "Ile de France" as a seaman, the alien, Marcel Bourret, aged 23, who was requested to be detained on board said steamship, as is hereinafter set forth in greater detail.

5. That the said Marcel Bourret arrived as a seaman and was regularly listed as a member of the crew, being an assistant cook on the S. S. "Ile de France"; that on the vessel's arrival it was boarded by a representative of the United States Immigration Service who directed the master to detain this seaman and 101 other members of the crew of the "Ile de France" on the ground that they had not established that they were bona fide alien seamen. The order for detention was given pursuant to the Act of Feb. 5, 1917, reference to the Act of Dec. 26, 1920, and the Act of May 26, 1924, being stricken out of the notice. This notice, therefore, was given under Section 32 of the Act of 1917, which was repealed by the Act of 1924, and the authorization for the giving of such notice was therefore non-existent. There was no question as to the seaman status of the said alien, but notwithstanding that all due precaution was taken to prevent his escape the alien effected his departure. That subsequently the plaintiff was advised by the Commissioner of Immigration at the Port of New York that the ascertained facts indicated that a fine of $1,000.00 should be imposed. The notice further stated that the plaintiff would [fol. 5] be allowed a certain period of time within which to submit evidence to show that such fine should not be imposed.

6. That plaintiff in accordance with the statute and regulations made thereunder duly filed a protest with the Secretary of Labor and submitted evidence to show why a fine should not be imposed.

7. The evidence submitted and the file and records of the Bureau of Immigration, Department of Labor, in the case of Marcel Bourret establish the following facts:

(a) That the said Marcel Bourret was born in and is a native of France.

(b) That the seaman Marcel Bourret was duly signed on the S. S. "Ile de France" as a member of the crew and

satisfactorily established that his seaman's status was bona fide.

(c) That the said Marcel Bourret was never given a fair hearing or in fact any hearing, or an opportunity to show he was a duly registered seaman entitled to shore leave.

(d) That the immigration law in effect at the time of the aforesaid seaman's arrival, as described in Subd. 5 of Section 3 of the Immigration Act of 1924, provides for the admission of alien seamen serving on a vessel arriving at a port of the United States seeking to enter temporarily into the United States solely in the pursuit of their calling as a seaman.

(e) That no proper notice was given to the plaintiff, the party sought to be charged.

[fol. 6] 8. That thereafter notwithstanding that the alien was coming to the United States solely in pursuit of his calling as a seaman, the plaintiff was notified that the Secretary of Labor had directed that a fine be imposed.

9. That subsequently the Collector of Customs at the Port of New York, the defndant herein, refused to clear the said vessel and permit its departure unless the sum of $1,000.00 which represented the fine, was paid to him. That thereupon, and for the sole purpose of securing clearance and avoiding detention of the vessel and to permit of its departure, the plaintiff under protest deposited the sum of $1,000.00 with the defendant.

10. That the alien was brought to the United States based on the conclusion that he was a seaman and as such had a right to go ashore for a period of sixty days and his seaman status was unquestioned.

11. That in bringing the said alien to the United States on the S. S. "Ile de France" and the fact that this alien seaman left the vessel did not justify the imposition of any fine on the plaintiff, and the act of the Secretary of Labor in imposing a fine was without lawful authority and arbitrary, and the defendant had and received said money to the use of the said plaintiff.

12. That the alleged inadmissibility of the aforesaid alien seaman was not known and could not have been ascertained

by the exercise of reasonable diligence by the plaintiff herein prior to the alien's departure from the foreign port of embarkation.

[fol. 7] 13. That demand has been duly made by the plaintiff and payment has been refused by the defendant.

For a Second Cause of Action

14. Plaintiff realleges paragraphs 1, 2 and 3 with the same force and effect as if the same were herein fully set forth, and further complaining of the defendant alleges as follows:

15. That heretofore and on or about February 6, 1930, plaintiff brought to the United States at the port of New York on the S. S. "Ile de France" as a seaman, the alien, Fernand Rouquette, aged 24, who was requested to be detained on board said steamship, as is hereinafter set forth in greater detail.

16. That the said Fernand Rouquette arrived as a seaman and was regularly listed as a member of the crew, being a steward on the S. S. "Ile de France"; that on the vessel's arrival it was boarded by a representative of the United States Immigration Service who directed the master to detain this seaman and 101 other members of the crew of the "Ile de France" on the ground that they had not established that they were bona fide alien seamen. The order for detention was given pursuant to the Act of Feb. 5, 1917, reference to the Act of Dec. 26, 1920, and the Act of May 26, 1924, being stricken out of the notice. This notice, therefore, was given under Section 32 of the Act of 1917, which was repealed by the Act of 1924, and the authorization for the giving of such notice was therefore nonexistent. There was no question as to the seaman status [fol. 8] of the said alien, but notwithstanding that all due precaution was taken to prevent his escape the alien effected his departure. That subsequently the plaintiff was advised by the Commissioner of Immigration at the Port of New York that the ascertained facts indicated that a fine of $1,000.00 should be imposed. The notice further stated that the plaintiff would be allowed a certain period of time within which to submit evidence to show that such fine should not be imposed.

17. That plaintiff in accordance with the statute and regulations made thereunder duly filed a protest with the Secretary of Labor and submitted evidence to show why a fine should not be imposed.

18. The evidence submitted and the file and records of the Bureau of Immigration, Department of Labor, in the case of Fernand Rouquette establish the following facts:

(a) That the said Fernand Rouquette was born in and is a native of France.

(b) That the seaman Fernand Rouquette was duly signed on the S. S. "Ile de France" as a member of the crew and satisfactorily established that his seaman's status was bona fide.

(c) That the said Fernand Rouquette was never given a fair hearing or in fact any hearing, or an opportunity to show he was a duly registered seaman entitled to shore leave.

(d) That the immigration law in effect at the time of the aforesaid seaman's arrival, as described in Subd. 5 of [fol. 9] Section 3 of the Immigration Act of 1924, provides for the admission of alien seamen serving on a vessel arriving at a port of the United States and seeking to enter temporarily into the United States solely in the pursuit of their calling as a seaman.

(e) That no proper notice was given to the plaintiff, the party sought to be charged.

19. That thereafter notwithstanding that the alien was coming to the United States solely in pursuit of his calling as a seaman, the plaintiff was notified that the Secretary of Labor had directed that a fine be imposed.

20. That subsequently the Collector of Customs at the Port of New York, the defendant herein, refused to clear the said vessel and permit its departure unless the sum of $1,000.00, which represented the fine, was paid to him. That thereupon, and for the sole purpose of securing clearance and avoiding detention of the vessel and to permit of its departure, the plaintiff under protest deposited the sum of $1,000.00 with the defendant.

21. That the alien was brought to the United States based on the conclusion that he was a seaman and as such had a

right to go ashore for a period of sixty days and his seaman status was unquestioned.

22. That in bringing the said alien to the United States on the S. S. "Ile de France" and the fact that this alien seaman left the vessel did not justify the imposition of any [fol. 10] fine on the plaintiff, and the act of the Secretary of Labor in imposing a fine was without lawful authority and arbitrary, and the defendant had and received said money to the use of the said plaintiff.

23. That the alleged inadmissibility of the aforesaid alien seaman was not known and could not have been ascertained by the exercise of reasonable diligence by the plaintiff herein prior to the alien's departure from the foreign port of embarkation.

24. That demand has been duly made by the plaintiff and payment has been refused by the defendant.

Wherefore, plaintiff demands judgment against the defendant in the sum of $2,000.00 with interest from June 3, 1930, together with the costs and disbursements of this action.

John M. Lyons, Joseph P. Nolan, Attorneys for Plaintiff, 27 William Street, 60 Broad Street, Borough of Manhattan, New York City.

[fol. 11] *Duly sworn to by G. H. de Villeneuve. Jurat omitted in printing.*

[fol. 12] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ANSWER

The defendant above named by George Z. Medalie, United States Attorney for the Southern District of New York, his attorney, for his answer to the complaint herein, upon information and belief:

As to the First Cause of Action

1. Denies each and every allegation contained in paragraph numbered 4 of the said complaint, except that on or

about February 6, 1930, the plaintiff brought to the United States at the Port of New York on the S. S. Ile de France the alien Marcel Bourret, aged twenty-three, who was requested to be detained on board said steamship.

2. Denies each and every allegation contained in paragraph numbered 5 of the said complaint, except that the said Marcel Bourret was stated to be an assistant cook on the S. S. Ile de France. That on the vessel's arrival it was boarded by a representative of the United States Im-
[fol. 13] migration Service, who directed the master to retain this alien on the ground that he had not established that he was a bona fide alien seaman. That notices was given under the Immigration Act and that the alien effected his departure.

3. Denies each and every allegation contained in paragraph numbered 6 of the said complaint.

4. Denies each and every allegation contained in paragraph numbered 7 of the said complaint.

5. Denies each and every allegation of paragraph numbered 8 of the complaint, except that the plaintiff was notified that the Secretary of Labor had directed that a fine be imposed.

6. Denies each and every allegation contained in paragraphs numbered 10, 11 and 12 of said complaint.

As to the Second Cause of Action

7. Denies each and every allegation contained in paragraph numbered 15 of the said complaint, except that on or about February 6, 1930, plaintiff brought to the United States at the Port of New York on the S. S. Ile de France the alien Fernand Rouquette, aged twenty-four, who was requested to be detained on board said steamship.

8. Denies each and every allegation contained in paragraph numbered 16 of the said complaint, except that the said Fernand Rouquette was ordered detained by a repre-
[fol. 14] sentative of the United States Immigration Service, who boarded the vessel on its arrival and who ordered the said Fernand Rouquette detained on the ground that he had not established that he was a bona fide alien seaman.

9. Denies each and every allegation contained in paragraphs numbered 17 and 18 of the said complaint.

10. Denies each and every allegation contained in paragraph numbered 19 of the said complaint, except that the plaintiff was notified that the Secretary of Labor had directed that a fine be imposed.

11. Denies each and every allegation contained in paragraphs numbered 21, 22 and 23 of the said complaint.

Wherefore, the defendant demands judgment against the plaintiff dismissing the complaint, together with the costs and disbursements of this action.

George Z. Medalie, United States Attorney for the Southern District of New York, Attorney for Defendant, Office and P. O. Address, U. S. Courts and P. O. Bldg., Borough of Manhattan, City of New York.

[fol. 15] *Duly sworn to by Philip Elting. Jurat omitted in printing.*

[fol. 16] In United States District Court, Southern District of New York

L. 50/136

Compagnie Generale Transatlantique, Plaintiff,

against

Philip Elting, Collector of Customs, Port of New York, Defendant

Judgment

The issues in this action having been regularly brought on for trial before the Honorable Francis G. Caffey, United States District Judge, and a Jury of one, at a stated term of this Court held on the 2nd day of February, 1934, and the plaintiff appearing by John M. Lyons, Esq., its attorney (Roger O'Donnell, Esq., of counsel), and the defendant appearing by Martin Conboy, United States Attorney for the Southern District of New York, his attorney (George B.

Schoonmaker, Assistant United States Attorney, of counsel), and the allegations and proofs on behalf of the plaintiff and the defendant having been heard and considered, and thereafter at the close of the testimony for both sides, the attorney for the plaintiff having moved for the direction of a verdict in favor of the plaintiff in each cause of action and the attorney for the defendant having moved for the direction of a verdict in favor of the defendant in each cause of action dismissing the complaint, and the Court having directed a verdict in favor of the defendant in each [fol. 17] cause of action, and the defendant's costs having been taxed in the sum of $30.00,

Now, on motion of Martin Conboy, United States Attorney for the Southern District of New York, attorney for the defendant, it is

Ordered and adjudged that the complaint herein be and the same hereby is dismissed on the merits, and that Philip Elting, Collector of Customs, port of New York, the defendant herein, recover of Compagnie Generale Transatlantique, the plaintiff herein, the sum of $30.00, costs as taxed, and that the defendant have execution therefor.

Judgment signed this 24th day of February, 1934.

Charles Weiser, Clerk.

[fol. 18] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

Plaintiff's Bill of Exceptions.

Before Hon. Francis G. Caffey, J., and a jury of one

New York, N. Y. February 2, 1934

APPEARANCES

John M. Lyons, Esq., and Roger O'Donnell, Esq., of counsel, for the Plaintiff.

Martin Conboy, Esq., United States Attorney, by George B. Schoonmaker, Esq., Assistant U. S. Attorney, for the Defendant, of counsel.

STIPULATION AS TO TRIAL

It was stipulated by and between the attorneys for the respective parties hereto that this case should be tried be-

fore the court and a jury of one with the same force and effect as if tried before the court and a jury of twelve, and that each side should move for a directed verdict at the close of the case.

[fol. 19] A jury of one was duly impaneled and sworn.

STATEMENT OF COUNSEL

Mr. O'Donnell: On the arrival of the steamship "Ile de France" February 6, 1930, the vessel was boarded by certain immigration officers, among others, Inspector E. J. Lepoint, and he served upon the fourth officer of the ship, as shown by receipt, which I will offer in evidence later. The fourth officer of the ship, a notice to detain on board the vessel 102 members of the crew. These two men were members of the crew. There is no dispute about that. There was a notice—while these papers purport to be addressed to the owner, agent, consignee, master or officer in charge of the steamship, it was not served upon any of those individuals.

The notice which will be offered in evidence is upon a printed form, reading as follows:

"Pursuant to the provisions of the Acts of February 5, 1917, December 26, 1920, and May 26, 1924, and the immigration regulations issued by the Secretary of Labor thereunder, you are hereby directed to detain on board the steamship Ile de France its crew of men."

The inspector who served the notice struck out all reference to the acts of December 26, 1920, and May 26th, 1924, so that the notice as amended by him read "Pursuant to the provisions of the Acts of February 5, 1917, and immigration regulations issued by the Secretary of Labor thereunder, you are hereby directed to detain," and so forth.

That was the only notice that was given to the steamship company.

The Court: It did not set out any grounds in the notice?

[fol. 20] Mr. O'Donnell: Yes, it said, "have not established they are bona fide seamen; are not on the visa of the crew list."

The Court: "Not established bona fide seamen"?

Mr. O'Donnell: And "not on the visa crew list." The first notice which the French Line received—they are the plaintiffs in this action—was a notice dated February 19, 1930, 13 days after the arrival of the vessel. The notice reads "To the French Line"——

The Court: Wait a minute. That is an additional notice from the one you have been telling me about?

Mr. O'Donnell: Yes, that is the first notice the company received.

The Court: The first notice served on the company itself?

Mr. O'Donnell: On the company itself. Addressed to the French Line, Agent of the vessel "Ile de France," 19 State Street, New York City. It is a notice of intention to impose a $2,000 fine, not a notice to detain on board. These two seamen in the meantime, and in some manner unknown to the company or its representatives, effected their departure from the vessel by desertion.

In response to the notice of intention to impose a fine, the company through myself as their attorney, submitted a defense under date of May 16, 1930, which will be offered in evidence, setting up a number of grounds as to why the penalty should not be imposed. That defense was overruled by the Secretary of Labor on May 17, 1930, and a fine of $2,000 was ordered to be paid to the Collector of Customs, the defendant in this action. The money was paid on June 3, 1930.

[fol. 21] Mr. O'Donnell: I now offer in evidence, if the Court please, Department of Labor File No. 55704/381.

The Court: Received, Exhibit 1.

(Marked Plaintiff's Exhibit No. 1.)

The plaintiff and the defendant then rested.

STATEMENT BY THE COURT

The Court (orally): First, I think the fact that the notice to detain referred to the wrong statute is of no consequence.

It is settled in a variety of types of cases, which seem to me pertinent here, that reference to a particular statute in a document is more or less in the nature of labeling. There is hardly anything which needs more care than an

indictment. Yet an indictment is good although it be alleged therein, or it be marked on its cover, that it is laid under a provision of law different from that which applies or which constitutes legal foundation for the charge.

Here the direction about detention was not ambiguous. It seems to me, therefore, that the inspector's striking from the body of the notice the dates of enactment of several statutes, and leaving in the notice, after this deletion, reference to a statute of a date which has no bearing on the case, is immaterial.

In the second place, it seems to me that there is no defect in the notice by reason of the fact that it was not personally signed by, or was not signed in the name of, the officer in charge at the port; but, on the contrary, was personally signed only by the inspector. The inclusion in the notice that what the inspector there did was "by direction of the immigration officer in charge" was entirely sufficient to render the notice a notice given by the officer in charge. It [fol. 22] thus enabled the inspector to take the action he did when he served the notice. Any narrower interpretation of the statute would render it practically unenforceable.

Third, the notice was addressed to the owner, among others. The suit is by the owner. Was the notice to detain served on the owner? That brings up two inquiries.

At the foot of the notice to detain there is an acknowledgment of service by an acknowledgment of the receipt of the notice. The names of two persons are there signed. The signatures are undecipherable to me and I believe they are undecipherable to counsel. It is plain that the name of the first person who signed the receipt is accompanied by the descriptive words "fourth officer." Apparently the name of the person who signed immediately below the fourth officer is accompanied by the word "Commander"; at least it looks to me like the English word "Commander."

The two inquiries that seem to me to arise out of this state of facts are these: (1) Was the service of the notice to detain, which was handed to either the fourth officer alone, or to the fourth officer and the commander, equivalent to service on the master of the vessel? (2) If so, was service on the master of the notice to detain sufficient service on the owner?

On the record, I think I would not be warranted to upsetting the Secretary's action, on the ground of lack of

sufficient service of the notice to detain, without something in the record to indicate that one or the other of the two persons whose names are signed at the foot of the receipt was not in charge of the ship at the time the inspector visited the ship for the purpose of serving a notice to detain [fol. 23] on someone in charge of it. If so—that is to say, if either of those gentlemen who signed the receipt was at the moment in charge of the ship—I think manifestly, within the meaning of the statute, the service was on the master.

My recollection is that there is authority for the proposition of law I have stated, though I am not sure of it. While in regard to a penal statute there may be some room for controversy, I think the weight of argument is in favor of holding that, when he went aboard the ship, service by the inspector on the fourth officer was the equivalent of compliance with the statutory requirement that the service be on the master and that such service was adequate service on the master. One reason why I say this is true is that, if it were held otherwise, it would render exceedingly difficult, and often impracticable, enforcement of the provision of the statute for service on the master.

For example, if the statute were construed as requiring literally that the master individually be physically served, then that would mean that unless, when the inspector went aboard the ship, he could locate the master and have access to him personally, then the entire purpose of the statute could be frustrated. It would mean that unless, indeed, when the master absented or secluded himself, he left the ship in charge of the owner or the charterer or the agent, the Government would be powerless to enforce the law. I do not believe that the statute should be so narrowly construed or construed so as to lead to such a result.

Suppose the master was away from the ship—or if on the ship, away from his post, off duty, and not to be found [fol. 24] by the utmost diligence—at the time the inspector went aboard. In a situation like that, if the statute were construed to mean that the master individually must be served, it would seem to follow that if the inspector, when he went on the ship for the purpose of serving the notice, ascertained that the master himself was absent from the ship, then he could not even serve the person in charge of the ship, in lieu of and exercising the functions of the

master, while the master was absent. Because the interpretation that there must be service on the master personally would lead to such a consequence, I think such an interpretation should be rejected and that we should adopt a more liberal interpretation, which would construe the statute as meaning that service on the fourth officer or service on the commander, who was in command of the ship at the moment, was entirely sufficient to satisfy the satutory requirement of service on the master and that such service should be treated as the equivalent of service on the master.

I find nothing to the contrary in any of the three cases relied on by the plaintiff.

In the Columbus case, 62 Fed. (2d), the agent was sued; but the agent had not been served with notice to detain. It was, therefore, held—necessarily, as it seems to me—that there could be no recovery.

In the Winchester case, 40 Fed. (2d), there were the same facts. The agent was sued, although not served with the direction to detain—the fact being that the master had been served with the notice to detain. As matter of law, the master is not the representative of the agent of the ship. Moreover, in the Winchester case, at page 473, there is [fol. 25] a direct statement, and in the Columbus case, at page 796, it is not denied and perhaps is implied, that the master is the agent of the owner.

Again, in Navigazione Libera, etc. v. Elting, the so-called Isarco case, 4 Fed. Supp. 951, decided by Judge Goddard, the notice of intention to fine was addressed to the agent only. It was not addressed to the owner. It was not served on the owner. It was served on the agent only. The suit was by the owner; but, the notice of intention to fine not having been addressed to or served on the owner, for that reason it was held that what was done in connection with the notice of intention to fine was insufficient to charge the owner with liability.

There is another reason which tends to sustain the conclusion I have reached; that is, as I construe it, by the protest in the case at bar, as phrased, the complaints made by the owner, when cited to show why fines should not be imposed, were put on somewhat different grounds from those advanced at this trial. I believe that there was no complaint that the owner was not properly served with notice to detain or of intention to impose a fine; but even if so,

failure to give notice of intention to fine was waived because the owner then appeared by counsel.

There has been some discussion as to whether there was a fair hearing—although, as I understand, counsel for plaintiff does not make the point. Only the defendant itself mentioned it. The fact is, however, that there was a fair hearing.

Gentlemen, you may make your motions.

MOTIONS FOR DIRECTED VERDICT

Mr. O'Donnell: Plaintiff moves for a directed verdict in favor of the plaintiff.

Mr. Schoonmaker: Defendant moves for a directed verdict for defendant on the first and second causes of action. [fol. 26]—Mr. O'Donnell: In both causes I move for a directed verdict for the plaintiff.

The Court: There is no occasion to rule on them separately?

Mr. O'Donnell: No. I want it to cover both causes; I want the exception to cover both.

The Court: Motion of the plaintiff denied, with an exception to the plaintiff. Motion of the defendant granted.

Mrs. O'Donnell: Does that exception also go to the opinion expressed in the matter, as well as the decision, because I want to reserve my legal points on them?

The Court: You may take an exception.

Mr. O'Donnell: Special exception to that?

The Court: Yes.

Mr. O'Donnell: I wish to reserve a special exception to the opinion. I would like to have an exception noted as to the reason.

The Court: You have an exception, in so far as any exception is necessary, in order to raise the question. What I have said was just by way of explanation—how I have reasoned in reaching my conclusion; that is all. You may have an exception.

Mr. O'Donnell: In other words, it is a mere explanation of the mental process.

The jury accordingly returned a verdict for the defendant in each cause of action.

[fol. 27] ORDER SETTLING BILL OF EXCEPTIONS

Upon the annexed consent and on motion of John M. Lyons, attorney for the plaintiff herein, I hereby sign, settle and allow the foregoing, together with the exhibits admitted in evidence, as and for the plaintiff's bill of exceptions and order the same to be filed.

Dated, New York, N. Y., May 2, 1934.

Francis G. Caffey, U. S. D. J.

I hereby consent to the settling, allowing and filing of the above, together with the exhibits admitted in evidence, as and for the plaintiff's bill of exceptions.

Dated, New York, N. Y., May 2, 1934.

Martin Conboy, United States Attorney, Attorney for Defendant.

[fol. 28] PLAINTIFF'S EXHIBIT 1

United State Department of Labor, Bureau of Immigration
File 55704/381.

Form 559—Notice to Deliver, Detain on Board, or Remove Aliens

U. S. Department of Labor,

Immigration Service

Port of N. Y., 2/6, 1930.

To the Owner, Agent, Consignee, Master or Officer in Charge of the SS. Ile de France, Frence Line:

Pursuant to the provisions of the Acts of February 5, 1917, and the Immigration Regulations issued by the Secretary of Labor thereunder, you are hereby directed to detain on board S/S Ile de France the following-named aliens, with their baggage, your attention being invited to the appropriate sections of the statute appearing on the reverse side hereof:

Name — Status on vessel (1st, 2d, or 3d class passenger; member of the crew; stowaway, etc.)

Seamen as per attached list, Hundred and Two (102) in all. Have not established that they are bona fide seamen, and not on visa crew list.

By direction of the Immigration Officer in Charge.

E. J. Lapointe, U. S. Immigrant Inspector.

Receipt of the above notice is hereby acknowledged.

4th Officer (Signature illegible.) (Title of person signing receipt). (Signature illegible), Commander.

[fol. 29] (Over.) (Here are printed the Extracts from the Acts of February 5, 1917 December 26, 1920, and May 26, 1924.)

Paquebot "Ile de France"

Personnel Embarque Par L'Armement De Paris

ALLUITE	Lucien	Chef de partie
DEBEUIL	Rémond	"
MARCHAND	Francis	"
COURBOIN	Henri	"
BENITES	Francois	"
DOUCET	Raymond	"
SURDON	Pierre	"
GIPONNI	André	"
ROY	Paul	"
MAUBLANC	Francois	"
HIXON	Albert	"
DURAND	Paul	"
SALLIER	Louis	"
DOUTHE	Paul	"
PLAUCHE	Claude	Cuisiner
POTE	Georges	"
DERILLETTE	Alexis	"
KIELY	Armand	"
FANCELLI	Antoine	"
PETIT	Roger	"
CHOUCHEROLLE	Henri	"
REGAMEY	Leon	"

Paquebot "Ile de France"—Continued

CHANTRY	Edmond	Cuisiner
CASAGRANDE	Edouard	"
LAMADON	Julien	"
COTHAN	Policarpe	Aide "
ASSUIED	Félix	" "
PAROY	Jean	" "
BOURETTE	Marcel	" "
DESPLATS	Gustave	" "
PASCAL	Georges	" "
LE ROUX	Albert	" "
PASTIER	Abel	" "
RICOUX	Emile	" "
GUILLUY	André	Boucher
URIEN	Alphonse	"
HACK	Henri	Patissier
CRAMFORT	Marcel	"
LECHERC	Louis	"
LEMERRE		"
GRANGER		"
SURVILLE	Georges	Boulanger
CHATELIER	Joseph	Garcon
THIEBAUT	James	"
DURAND	Felix	"
ROUQUETTE	Fernand	"

[fol. 30]

MAUCURIER	Marcel	"
CHARTIER	Maurice	"
POSTE	André	"
GRENIER	Jean	"
DEMANNEVILLE	Georges	"
DUPONT	Jules	"
DUPEYRAT	André	"
SADET	Léon	"
ROVELLO	Arthur	"
BONY	Francois	"
CARBONNIER	Lucien	"
BERGEON	Georges	"
BIRAUX	André	"
MEYER	René	"
DUPAS	Henri	"
POLIVKA	Marcel	"
LACOUSTILLE	Justin	"

Paquebot "Ile de France"—Continued

SAUNIER	André	Garcon
GAY	Georges	"
GRANCHER	Emile	"
BROSSARD	Jean	"
LEDREAUX	Alain	"
BERTRON	Marcel	"
CORMIC	Jean	"
BEAUDRON	Robert	"
MONTANIER	Robert	"
BLANCHERD	Robert	"
VIRGILLE	Joseph	"
BERTIN	André	"
GUYOT	Pierre	"
LATAPI	René	"
CONVERSY	Georges	"
LAVEAU	Lucien	"
CANCEL	Louis	"
CAILLAT	Fernand	"
GUILLAMOT	Jean	"
MORINEAU	Alphonse	"
BRAUN	Maurice	"
MONNIN	Alexandre	"
VOURET	Marice	"
LACAZE	Henri	"
ROUGIER	Pierre	"
DUBOIS	Francois	"
MAYSONNAVE	Eugène	"
BARD	Gustave	"
LAVABRE	Célestin	"
CURE	René	"
THOMAS	Francois	"
GUIDON	Paul	"
LE ROUX	Henri	"
FABRE	Francois	"
HERMAND	Arsène	"
CORRE	Pierre	"
EHERET	Jules	"
DOUBLET	Fernand	"
NADERAS	Fernand	"

[fol. 31] U. S. Department of Labor

Immigration Service

Office of Commissioner of Immigration,
Ellis Island, New York Harbor

In answering refer to No. —.

Feb. 7, 1930.

Commissioner of Immigration:

Inspector Lapointe, who examined the crew of SS "Ile de France" upon its arrival yesterday, directed the detention on board of 102 members of the crew because they did not establish that they were bona fide seamen. He reports that the following named were not on board the vessel when it sailed to-day:

Marcel Bourret, age 23, French, asst. cook;
Fernand Rouquette, age 24, French steward.

A copy of the detention order is attached hereto.

J. J. McKee, Inspector-in-charge, Boarding Division.

(Stamped: Rec'd U. S. Immigration Service, Ellis Island, Feb. 7, 1930, 3:43 P. M.)

[fol. 32] (Duplicate)

Notice of Liability for Fine on Account of Failure to Detain on Board, etc., Alien Seamen

U. S. Department of Labor,

Immigration Service

99171/602.

Office of Commissioner of Immigration,

Ellis Island, New York Harbor

February 19, 1930.

To French Line, Agent (Master or commanding officer) of the Vessel "Ile de France" at N. Y. 2/6/30. 19 State Street, N. Y. C.:

You are hereby notified that it appears that the alien seamen whose names are shown herein were permitted to land

in the United States contrary to regulations prescribed by the Secretary of Labor, or were not detained on board until inspected by the Immigration officers, or were not detained on board after such inspection or deported as required by such immigration officers, or the Secretary of Labor. It therefore appears that a fine should be imposed, under the provisions of Sections 19 and 20 of the "Immigration Act of 1924."

If you desire a hearing as to whether a fine should be imposed in this instance, you will be allowed sixty days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you [fol. 33] deposit with the Collector of Customs at this port, prior to her sailing, the sum indicated below as security for the payment of the said fine, should it be imposed. Please submit evidence in duplicate.

Name of alien	Amount required to be deposited	Details of violation
Marcel Bourret, 23, Asst. Cook.	$1000	Failure to detain on board after service of notice to do so.
Fernand Rouquette, 24, Steward.	1000	

(S) (Name) Byron H. Uhl, (Official Title) Assistant Commissioner.

cc.

Received the above notice 2/28/30.

French Line, per (Illegible).

Witness: Jos. J. Juiliani.

[fol. 34] Law Office of Roger O'Donnell,
Westory Building, Washington, D. C.

FL. #811.

March 1, 1930.

The Honorable The Secretary of Labor, Washington, D. C.

SIR:

Entry of Appearance is hereby made in the case of the person named below, which is to come before the Department of Labor on fine proceedings.

Name-: Marcel Bourret and Fernand Rouquette.
Port: New York, N. Y.

I will appear as attorney for the French Line in the above proceedings.

Upon receipt of the record, advices are requested by the undersigned.

Respectfully, Roger O'Donnell.

ROD: mkb.

Appearance of Attorney Roger O'Donnell.

[fol. 35] French Line,

Compagnie Generale Transatlantique,

19 State Street, New York

FL. #811.

March 6, 1930.

U. S. Commissioner of Immigration, Ellis Island, N. Y. H.

SIR:

In reference to your file No. 99171/602, fine notice concerning the failure to detain Marcel Bourret and Fernand Rouquette on board SS "Ile de France" after service of notice to do so, we request that the papers in this matter be forwarded to the Department in Washington with notice that our attorney, Mr. Roger O'Donnell, will appear and present suitable defense.

Respectfully, Compagnie Generale Transatlantique, by John J. Scotto, Asst. General Passenger Manager.

wn.

(Stamped: Rec'd U. S. Immigration Service, Ellis Island, Mar. 10, 1930, 10:14 A. M.)

[fol. 36] U. S. Department of Labor,

Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

In answering refer to No. 99171/602.

March 15, 1930.

Commissioner General of Immigration, Washington, D. C.:

There is transmitted herewith notice of liability for fine served on the French Line, agents of the SS "Ile de

France" at New York February 6, 1930, incident to a violation of sections 19 and 20 of the Act of 1924 on account of the failure of the Master of the vessel to detain on board ship Marcel Bourret and Fernand Rouquette, members of the crew, after service of an order to do so.

Report of Inspector in Charge of the Boarding Division, dated February 7, 1930, and copy of Form 559 served upon the Master are herewith enclosed. No formal protest has been submitted by the Line as they indicate that Mr. Roger O'Donnell will appear before the Department and present suitable defense.

On the facts before me, there has been a clear violation of law. I therefore recommend the imposition of fine.

Byron H. Uhl, Assistant Commissioner.

JS:AK.
Encl.

(Stamped: Rec'd Bu. of Immigration, Mail and Files, Mar. 17, 1930, 1:45 P. M.)

[fol. 37] Mar. 18-30.

55704/381.

Marcel Bourret & Fernand Rouquette, SS Ile de France, Feb. 6-30.

To Atty. O'Donnell this date.

J. W. B.

Law Office of Roger O'Donnell,
Westory Building, Washington, D. C.
Telephone Dist. 1153. Cable Address: O'Donnell,
Washington

Roger O'Donnell. William J. Peters, Lambert O'Donnell, Thomas W. O'Brien.

May 16, 1930.

Commissioner-General of Immigration, Department of Labor, Washington, D. C.:

File No. 55704/381

SIR:

This relates to fine notice under the above number, directed to the French Line and covering the cases of Marcel

Bourrett and Fernand Rouquette, members of the crew of the SS "Ile De France" which arrived at New York, [fol. 38] February 6, 1930, the ground for the fine notice purporting to be Section 20 of the Act of February 26, 1924, for alleged failure to detain on board said vessel the two alien sailors mentioned, who were reported on Form 689 as deserters.

The order for detention of these aliens was issued by E. J. Lapointe, United States Immigration Inspector, and was given pursuant to the provisions of the Act of February 5, 1917, reference to the Act of December 26, 1920, and Act of May 26, 1924, being stricken out of the notice. It is obvious, therefore, that this notice was given under Section 32 of the Act of 1917, which was repealed by the Act of 1924, and the authorization for the giving of any such notice was therefore non-existent.

Furthermore, Section 20 of the Act of 1924 is highly technical as it requires inspection of the Immigration Officer in Charge at the port of arrival, in this instance the Commissioner of Immigration for the port of New York; and, even if the notice had been issued under Section 20 of the Act of 1924, such notice was worthless unless issued by the Immigration Officer in Charge. There is no authority in Section 20 to delegate the power which reposes in the Immigration Officer in Charge to any subordinate officer, which is in direct contrast to the provisions of Section 15 of the Act of 1917, relating to the inspection of alien passengers, which expressly authorizes the sending of competent assistants to vessels for the inspection of arriving alien passengers. The statutory authority conferred by Section 20 of the Act of 1924 is confined to the Immigration Officer in charge at the port of arrival and no such notice was issued in this case. This statute is so highly penal in its [fol. 39] provisions that it must be strictly construed in favor of the accused.

There is no evidence to show any inspection officer or employee of the French Line had anything to do with the escape of these two sailors from the vessel and in the absence of the notice which the statute prescribes, it is submitted that no penalty was incurred and that the Department's finding should be in accordance with that conclusion.

In behalf of the French Line, formal protest is hereby made against any action looking to the imposition of the penalty and all legal rights are expressly reserved.

Respectfully, Roger O'Donnell, Attorney for the French Line.

ROD:mkb.

55704/381—Ellis Island.

May 17, 1930.

In re: SS "Ile de France," February 6, 1930.
Aliens: Marcel Bourret and Fernand Rouquette.
This case comes before the Board of Review in fine proceedings.
No hearing. Attorney Roger O'Donnell interested.
Report to the Comptroller General.

The record relates to the failure of the master to detain on board the two aliens named above after due notice to do so had been served on him. They arrived as members of the crew.

[fol. 40] The attorney protests against the imposition of a fine on the ground that the detention notice served on the master was pursuant to the provision of the Act of February 5, 1917, as reference to the Act of December 26, 1920, and the Act of May 26, 1924, had been stricken out. He contends that as Section 32 of the Act of 1917 was repealed by the Act of 1924, there was no authority in law for serving the notice and that in any event, the Commissioner of Immigration at the port of New York must serve such notices as he cannot delegate this authority to any subordinate officer. He contends that there is no evidence to show that any officer or employee of the French Line had anything to do with the escape of these two seamen from the vessel and that no penalty was incurred and the fine should be remitted.

Section 32 of the Act of 1917 was not repealed by the Act of 1924. The latter act provides that where a legal notice is served on the master to detain on board and deport a member of the crew and where such notice is not complied with a penalty is to be imposed. Whether or not the Inspector or some other person crossed out from the notice reference to the Act of 1924, the notice nevertheless remains legal and binding. While there is nothing to show negli-

gence on the part of the master or any other employee in connection with the landing of these two aliens, there was a failure to detain them on board and deport them and this failure is proved by the fact that they were not on board the vessel at the time it left the United States and by the admission of the Steamship Company.

It is found that there was a violation of law in this instance, and it is recommended that the penalty as provided [fol. 41] in Section 20 of the Act of May 26, 1924, be imposed in the sum of $2,000.

JWB.FVS.

So ordered.

L. Paul Winings, Chairman, Secy. & Comr., Genls. Board of Review. W. N. Smelser, Assistant to the Secretary.

Received May 19, 1930 at 12:15 P. M.

U. S. Department of Labor, Bureau of Immigration, Washington

No. 55704/381—C.

May 21, 1930.

The Comptroller General of the United States, Washington, D. C.:

Dear Sir:

The bureau desires to inform you that a fine in the amount of $2,000 has been finally imposed against the S. S. "Ile de France" arriving at New York on February 6, 1930, on account of the aliens Marcel Bourret and Fernand Rouquette.

The appropriate immigration officer has been directed to request the appropriate customs officer to deposit the [fol. 42] amount as above indicated in the Treasury and return the passage money in the sum of $—— to the alien (his parents, or guardian, etc.). New York file No. 99171/602.

Respectfully, Harry E. Hull, Commissioner General.

1247—ed.

55704/381—C.

May 21, 1930.

Roger O'Donnell, Esquire, Westory Building, Washington, D. C.

DEAR SIR:

In reply to your letter of May 16, 1930, you are informed that the Department has found it necessary to impose a fine against the French Line, agents of the S. S. "Ile de France," on account of the aliens Marcel Bourret and Fernand Rouquette, in the sum of $2,000.00, as provided in Section 20 of the Act of May 26, 1924.

Respectfully, Harry E. Hull, Commissioner General.

Official copy hereof furnished the Commissioner of Immigration, Ellis Island, New York Harbor, for his information and appropriate action, reference being had to his file No. 99171/602.

George J. Harris, Assistant Commissioner General.

[fol. 43] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the plaintiff by its attorney, John M. Lyons, and says that in the record and proceedings in the above-entitled cause there is manifest error which occurred at the trial of the proceedings had in the said cause upon which it will rely in the proescution of its appeal therein in the following:

First. The Court erred in directing a verdict for the defendant in causes of action numbered "1" and "2."

Second. The Court erred in granting defendant's motion for a directed verdict in causes of action numbered "1" and "2."

Third. The Court erred in not holding that the Secretary of Labor was arbitrary in imposing fines on the plaintiff under Section 20 of the Immigration Act of 1924 and Section 32 of the Immigration Act of 1917.

[fol. 44] Fourth. The Court erred in not holding that by the provisions of Section 20 of the Immigration Act of 1924 it is required that the inspection of alien seamen be made by the Immigration Officer-in-Charge at the port of arrival —in this instance the Commissioner of Immigration at the Port of New York.

Fifth. The Court erred in not holding that the fine notice was worthless unless issued by the Immigration Officer-in-Charge at the port of arrival.

Sixth. The Court erred in not holding that the owner, charterer, agent, consignee or master, to become liable to a fine under Section 20 of the Immigration Act of 1924 for the escape of alien seamen, must be individually ordered to detain the seamen on board.

Seventh. The Court erred in not holding that in order to lay the basis for the imposition of a fine under Section 20 of the Immigration Act of 1924 against the owner of the vessel for the escape of alien seamen, the notice to detain the seamen and the notice of intention to fine must both be served on the owner, plaintiff herein.

Eighth. The Court erred in holding that there was sufficient evidence in the records before the Secretary of Labor in Causes of Action 1 and 2 upon which to predicate fines for the escape of these alien seamen.

Ninth. The Court erred in holding that notice to the master of the vessel is sufficient notice to the owner.

[fol. 45] Wherefore, the plaintiff prays that the judgment herein in favor of the defendant be reversed and held for naught and that the paintiff be restored to all things which it has lost by reason of said judgment.

Dated New York, N. Y., April 5, 1934.

John M. Lyons, Attorney for Plaintiff. Office and P. O. address: 27 William Street, Borough of Manhattan, New York City.

In United States District Court, Southern District of New York

[Title omitted]

Petition for and Allowance of Appeal

Now comes the plaintiff, Compagnie Generale Transatlantique, and says that on the 24th day of February, 1934, the Court entered judgment herein against it dismissing [fol. 46] the complaint on its merits, and that by such judgment certain errors were committed to the prejudice of the plaintiff, all of which will more fully appear from the assignment of errors filed with this petition.

Wherefore, the plaintiff prays for an appeal from the said judgment to the United States Circuit Court of Appeals for the Second Circuit for the correction of the errors so complained of and for the allowance of the appeal and for leave to prosecute the same, and that a transcript of the record and proceedings in this cause, duly authenticated, be forwarded to the said Circuit Court of Appeals.

Dated New York, N. Y., April 5, 1934.

John M. Lyons, Attorney for Plaintiff. Office and P. O. address: 27 William Street, Borough of Manhattan, New York City.

The foregoing appeal is hereby allowed.

Dated New York, N. Y., April 5, 1934.

Wm. Bondy, U. S. D. J.

[fol. 47] Citation, in usual form, omitted in printing.

[fol. 48] In United States District Court, Southern District of New York

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled action, as agreed upon by the parties.

Dated New York, May 11, 1934.

John M. Lyons, Attorney for Plaintiff-Appellant. ——
——, United States Attorney, Attorney for Defendant-Appellee.

[fol. 49] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 50] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

COMPAGNIE GENERALE TRANSATLANTIQUE, Appellant,

against

PHILIP ELTING, Collector of Customs at the Port of New York, Appellee

HAMBURG-AMERICAN LINE, Appellant,

against

PHILIP ELTING, Collector of Customs at the Port of New York, Appellee

Before Manton, L. Hand and Swan, Circuit Judges

Appeals from the District Court for the Southern District of New York. Suits to recover penalties imposed for violation of the Immigration Act of 1924 (§ 20) (8 U. S. C. 167). Judgments for defendants; plaintiffs appeal. Affirmed.

Roger O'Donnell, Esq., John M. Lyons, Esq., Attorneys for Appellants.

Martin Conboy, Esq., United States Attorney, Attorney for Appellee. George B. Schoonmaker, Esq., Asst. U. S. Attorney, of Counsel.

MANTON, Circuit Judge:

[fol. 51] These cases involve similar questions and will be considered in one opinion. In Compagnie Generale Transatlantique, the S.S. "Ile de France" arrived at the port of New York February 6, 1930, having on board alien seamen. The immigration inspector boarded the vessel, examined the crew, and directed the detention of 102 members because they did not establish to his satisfaction that they were bona fide seamen. An order of detention was served upon the Fourth Officer of the vessel and also a person designated as Commander. Thereafter two of the seamen ordered detained escaped.

In the Hamburg-American Line case, the S.S. "Milwaukee" arrived at the port of New York April 15, 1930, with one alien seaman who did not establish to the satisfaction

of the immigration inspector, who boarded the vessel upon arrival, that he had no intention of abandoning his calling. A notice of detention was served on the First Officer of the vessel directing the detention of this seaman. Later he escaped.

Notice of hearing in the first case was given to the appellant, the owner of the vessel, designated as the "French Line, Agent of the Vessel 'Ile de France' ". Appellant, by counsel, appeared before the Department of Labor and protested against the fine. In the Hamburg-American Line case, the notice was served upon this appellant, owner of the vessel, designated in the notice as the "Hamburg-American Line, Agents for the Vessel 'Milwaukee' ". It appeared before the Department of Labor and its attorney protested against the imposition of the fine, alleging that the order of detention served on the First Officer was in-[fol. 52] valid, asserting that there could be no constructive notice of the order to detain and that the First Officer of the ship was not the agent of the owners. After the imposition of the fines, they were paid to obtain clearance of the vessels.

The officer served on each vessel was in charge of that vessel at the time of the service of the order of detention. In the Hamburg-American Line case, it was the inspector's duty to serve the order on the officer who had the responsibility and control of the crew for the detention of any one of them on board. Ordinarily this is the Master. When the Master is not in charge of the vessel, presumably it is the First Officer who takes the Master's place. United States v. Chemical Foundation, 272 U. S. 1. In the Hamburg-American Line case, in any event, the Master's report shows that he had notice of the order long before the alien escaped, and that he acted upon it. He was required to obey the order of detention and failed to do so.

In the Compagnie Generale Transatlantique case, the notice was sufficient as served. The owner was charged with the Master's or Commander's delinquency. It had notice that the fine would be collected from it and was represented by the attorney who unsuccessfully protested. For the reasons stated in the British Empire Steam Navigation Co. case and the Societe Ligure di Armamento case, decided this day, there were no errors below.

Judgments affirmed.

[fol. 53] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Compagnie Generale Trans., Hamburg American Line v. Philip Elting, etc. (Copy) Opinion. Manton, Circuit Judge.

[fol. 54] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 17th day of December, one thousand nine hundred and thirty-four.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

COMPAGNIE GENERALE TRANSATLANTIQUE, Plaintiff-Appellant,

vs.

PHILIP ELTING, as Collector, etc., Defendant-Appellee

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 55] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Compagnie Generale Transatlantique vs. Philip Elting, as Collector, etc. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Dec. 17, 1934. William Parkin, Clerk.

[fol. 56] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 54, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Compagnie Generale Transatlantique, Plaintiff-Appellant, against Philip Elting, as Collector, etc., Defendant-Appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 5th day of January, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the said United States the one hundred and fifty-ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 57] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 29, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.